IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 13197 of 2004

Between:

1 Deputy Inspector General of Police, Visakhapatnam Range,

Visakhapatnam.
2 Director General & I.G.of Police, Andhra Pradesh, Hyderabad
3 The Government of Andhra Pradesh, rep.by its Principal

Secretary, Home, Secretariat, Hyderabad

... PETITIONERS.

AND

Sri V.V.N.S.N.Murthy, U.D.Steno
O/o The Deputy Inspector General of Police, Visakhapatnam

Range, Visakhapatnam

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ or proceedings more particularly one in the nature of Writ of Certiorari calling for the records pertaining to the order passed on 06-04-2004 in O.A.No.5767/2002 on the file of the Hon'ble A.P. Administrative Tribunal, Hyderabad and quash the same as illegal and arbitrary.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent: MR.P.V.S.S.RAMA RAO

The Court made the following :

ORDER: (Per the Hon'ble Sri Justice G.Bikshapathy)

The petitioner is challenging the order dated 06-05-2004 passed by the A.P. Administrative Tribunal at Hyderabad in O.A.No.5767 of 2002 with M.A No.652 of 2004.

2. The respondent-employee was initially appointed as U.D. Stenographer in the year 1988. However, from 1994 onwards, his services were sought to be taken in the category of Junior Assistant/Senior Assistant, as the case may be. The grievance of the petitioner before the Tribunal is that he is entitled for promotion to the post of Office Superintendent. However, the same was rejected on the ground that he did not choose to opt for conversion as Senior Assistant as per A.P. Ministerial Service Rules, 1966. Therefore, he filed the O.A. seeking appropriate relief of promotion to the post of Office Superintendent on par with his juniors. The said O.A. was disposed of by the Tribunal with the following directions:

> "In the facts and circumstances of the case, it would be appropriate to direct the 1st respondent to consider the case of the applicant for promotion as Superintendent without insisting for his conversion as Senior Assistant and putting in minimum service as prescribed in the rules in that category without disturbing the promotions already made based on his seniority and if he fulfils the other requirements of the rules in the next available vacancy of Superintendent. The O.A. is accordingly disposed of with the above directions".

3. The order is now being challenged by the Government. The learned Government Pleader appearing for the petitioners submits that the Tribunal ought not to have directed the authorities to promote the respondent as Office Superintendent without insisting for his conversion as Senior Assistant under the Rules, which would

amount to granting exemption from the Rules. The competent authority is only the Government and the Tribunal ought not to have directed the Government to consider the case by relaxing the Rules in favour of the respondent herein.

4. On the other hand, the learned counsel for the respondent submits that the respondent was initially appointed as Senior Stenographer, which is equivalent to Senior Assistant. However, in order to become eligible for promotion as Superintendent, one has to put in a minimum service in the category of Senior Assistant as required under the A.P. Ministerial Service Rules. But in the instant case, there was no such opportunity to the respondent as his services were being utilized in the clerical category either as Junior Assistant or as Senior Assistant from 1994 onwards and, in fact, he was being treated as Senior Assistant by the authorities themselves. He further submits that the seniority list for the cadre of Senior Assistants was prepared by the authorities on 01-01-1998 and his name was shown at Serial No. 47. That itself shows that he was being treated as Senior Assistant for the purpose of promotion and other benefits. Under those circumstances, the learned counsel submits that the order of the Tribunal is quite legal and valid.

5. We have heard both the counsel.

6. It is not in dispute that the respondent was appointed as Senior Stenographer but however his services were being utilized as Junior Assistant or as Senior Assistant as required. This aspect was considered by the Tribunal at para 6 of its judgment as follows:

> "It is true that the applicant, who was appointed as Senior Stenographer, had not given his option for his conversion as Senior Assistant. However, even according to the counter filed by the respondents, the applicant has been posted to clerical posts from 1994 and he has been working in the clerical line for the last nearly 10 years. It is not in dispute that posting of the applicant to the clerical line is for administrative reasons. Though in the seniority list the applicant is senior enough to be considered for promotion as Superintendent his case is not being considered for the reason that he has not converted himself as Senior Assistant and he has not put in a minimum service as Senior Assistant on conversion as required under rules. It is true that the rule requires that a Senior Stenographer for the purpose of promotion as Superintendent should put in a minimum service as required under the Ministerial Service Rules after conversion as Senior Assistant in order to become eligible for promotion as Superintendent. When the authorities themselves have utilized the services of the applicant in the clerical line

from 1994, the case of the applicant cannot be overlooked on the ground that he had not opted for conversion to clerical line when the fact remains that the applicant has been working in the clerical line for the last 10 years. However, the applicant has been working in Junior Assistants category on being posted in the clerical line based on the orders issued by the 1st respondent for administrative reasons. The applicant who is a Senior Stenographer has to be posted normally as Senior Assistant if the authorities wanted to utilize his service on the clerical line and not as a Junior Assistant. If the authorities have not posted him as Senior Assistant and posted him as Junior Assistant, the applicant cannot be made to suffer as under the rules the applicant is entitled to be posted as Senior Assistant in case he is posted to clerical line. Consequently, the case of the applicant cannot also be overlooked on the ground that in the clerical line he had not worked as Senior Assistant but he had worked as Junior Assistant. In the above facts and circumstances, the service rendered by the applicant in the clerical line based on the orders issued by the 1st respondent for administrative reasons, though the applicant has not given his consent, has to be treated as service rendered by him on conversion in the clerical line and I feel that the ends of justice would be met by directing that the applicant should be treated as having the necessary experience in the clerical line on conversion for promotion as Superintendent."

7. It is true that the rule stands on different footing that the respondent has to complete the stipulated service and he should have an experience as Senior Assistant, but the situation in the instant case is different. The authorities themselves, having treated him as Senior Assistant, included his name in the seniority list. That itself establishes that he has been working as Senior Assistant with the knowledge of the authorities concerned, more especially the 1st petitioner who is competent authority himself is having sufficient knowledge that the respondent has been working as Senior Assistant. Under those circumstances, it would be redundant for the respondent to seek conversion to the post of Senior Assistant as his name was already included in the seniority list at Serial No.47. Thus, we do not find any ground to interfere with the judgment of the Tribunal.

8. In the result, the writ petition is dismissed. No order as to costs.

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G.BIKSHAPATHY, J

P.S.NARAYANA, J

Dated: 22-11-2004

Chvn.

To

1. The Deputy Inspector General of Police, Visakhapatnam Range,

Visakhapatnam.
2 The Director General & Inspector General of Police, Andhra

Pradesh, Hyderabad
3 The Principal Secretary,Government of Andhra Pradesh,

Home Department,Secretariat, Hyderabad

4. The Registrar,

A.P. Administrative Tribunal,

Hyderabad.

5. Two C.D. copies.

6. Two C.Cs. to the G.P. for Services-I, High Court of A.P., Hyderabad(OUT).